

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUGO MORENO-SANABRIA et al.,

Defendants.

3:11-cr-00070-RCJ-WGC-1

ORDER

A grand jury indicted Defendant Hugo Moreno-Sanabria of one count each of conspiracy to possess a controlled substance with intent to distribute, 21 U.S.C. § 846; possession with intent to distribute a controlled substance, *id.* § 841(a)(1), (b)(1)(A)(viii); and using, carrying, or possessing a firearm during and in relation to a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A). (Superseding Indictment, ECF No. 19). A jury found Defendant guilty of the conspiracy and possession offenses but acquitted him of the firearm offense. (Verdict, ECF No. 83). In March 2102, the Court sentenced Defendant to concurrent 151-month terms of imprisonment on each count. (*See* J. 2, ECF No. 110). Plaintiff appealed his conviction but not his sentence, and the Court of Appeals affirmed. (Mem. Op., ECF No. 124). In August 2015, the Court approved a stipulated sentence reduction to 121 months based on a retroactive amendment to the U.S. Sentencing Guidelines. (Order, ECF No. 139). Plaintiff has now asked the Court to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. He argues that the two points added to his offense level under U.S.S.G. § 2D1.1(b)(1) for possessing a dangerous weapon was in error because he was acquitted of the firearm offense.

1 long as the court is convinced by a preponderance of the facts at issue in the first offense. The
2 Supreme Court has squarely held that the application of a sentencing enhancement to an offense
3 for which a defendant has been convicted does not offend the Fifth Amendment simply because a
4 defendant has been acquitted of a second offense relying on the same factual allegations as the
5 sentencing enhancement. *United States v. Watts*, 519 U.S. 148 (1997). In *Watts*, as here, the
6 defendant had been charged with both drug possession and possession of a firearm in relation to
7 a drug offense, and, as here, the jury had convicted him of the drug offense but acquitted him of
8 the firearm offense. *See id.* at 149–50. As here, the district court enhanced the sentence for the
9 drug offense under U.S.S.G. § 2D1.1(b)(1) based on possession of the weapon. *Id.* at 150. The
10 Ninth Circuit reversed, reasoning that the jury’s acquittal on the firearm offense precluded the
11 district court from finding that the defendant had possessed the firearm for the purposes of
12 enhancing the sentence on the drug offense. *Id.* The Supreme Court reversed, noting that an
13 acquittal represented a failure to find the relevant facts to be true beyond a reasonable doubt,
14 which did not preclude a finding of those facts to be true by a preponderance of the evidence. *Id.*
15 at 157.

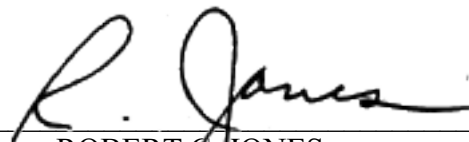
16 CONCLUSION

17 IT IS HEREBY ORDERED that the Motion to Vacate, Set Aside or Correct Sentence
18 Under 28 U.S.C. § 2255 (ECF No. 141), the Motion for Appointment of Counsel (ECF No. 142),
19 and the Motion for Leave to Proceed in Forma Pauperis (ECF No. 143) are DENIED.

20 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

21 IT IS SO ORDERED.

22 Dated this 23rd day of August, 2016.

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24 
25 ROBERT C. JONES
United States District Judge